IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4100 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHARAT CO-OPERATIVE BANK LTD. - Petitioner(s)
Versus
GUJARAT BANK WORKERS UNION - Respondent(s)

==========

Appearance :
MR KM PATEL for Petitioner(s) : 1,
MS HINA DESAI for Respondent(s) : 1,
MR MS MANSURI for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/04/2006

ORAL JUDGMENT

1.In the present petition, the petitioner-employer – Shri Bharat Co-operative Bank Limited, has challenged the legality of the order dated 21st February 2004 passed by the Industrial Court, Vadodara in Appeal (IC)

No.1/94.

2. By the impugned order, the Industrial Court was pleased to grant stay against the order dated 11.1.94 passed by the Labour Court, Vadodara. Effectively, the Industrial Court prevented the petitioner-Bank from filling up the post of an Officer, advertisement for selection of which was issued by the Bank and published in Gujarat Samachar daily on 7th July 1993. Several contentions were raised by the respondent Union to oppose the attempt on the part of the Bank to make direct recruitment. The Industrial Court, by the impugned order dated 11.2.94 granted stay against recruitment.

3. The petitioner, therefore, filed the present petition challenging the legality of the order of the Industrial Court. By the order dated 23rd March, 1994, while admitting the petition, learned single Judge of this Court granted interim relief in terms of para 17(B) of the petition. Effectively, therefore, the implementation of the order dated 11.2.94 passed by the Industrial Court was stayed.

4. Learned advocate Shri K.M.Patel for the petitioner submitted that the petitioner has under the protection granted by this Court proceeded further with the

selection process and also made appointment. He has further submitted that there were subsequent instances of appointments made on account of the earlier appointees vacating the post. He submitted that the proceeding initiated by the respondent Union itself is incompetent. He further submitted that the Industrial Court ought not to have granted interim injunction against the recruitment process since balance of convenience was heavily in favour of the petitioner-Bank.

5. On the other hand, learned advocate Ms.Hina Desai appearing for Shri Mansuri opposed the petition and supported the impugned order passed by the Industrial Court. She submitted that the main proceedings are still pending before the Labour Court.

6. Considering the above situation, it would appear that by the interim order passed by this Court way back in the year 1994, the petitioner Bank has made recruitment for the post in question. The main proceedings by which the respondent Union has opposed the attempt on the part of the Bank to make such recruitment is still pending before the Labour Court. At this distant point of time, therefore, I do not find it appropriate to disturb the situation prevailing

since 1994 particularly when the same is subject to the pending challenge of the respondent Union. Therefore, without expressing any opinion on the rival contentions, I find it appropriate to provide that the order dated 11.2.1994 passed by the Industrial Court would not be operated and the recruitment made by the petitioner to the post in question would not be disturbed during the pendency of the proceedings before the Labour Court. In that view of the matter, the petition is allowed. The impugned order of the Industrial Court is set aside. However, the Labour Court shall decide the pending dispute between the parties on its merits.

7. With these directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)